Police Liability and Litigation

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5 Supreme Court decisions from 2014 impacting law enforcement

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This year ends no differently than others — with reflections on the past year and hopes for the coming year.

The 2014 calendar brought us five significant Supreme Court cases which impact officers' understanding of Fourth Amendment limits, both in its extension and restrictions. Coincidentally, three of the cases came to the Supreme Court from the great state of California.

Fernandez v. California

In *Fernandez v. California*, the Court had to resolve the question as to whether the Fourth Amendment prohibited warrantless searches when a defendant — who previously objected to a consent search — was no longer present and the co-tenant subsequently consented. The 2006 Court decision in *Georgia v. Randolph* provided the "disputed permission rule" which said the police could not search a home when one physically present resident consents and the other does not.

So what does Fernandez add to the Court's consent jurisprudence? Going back to 1974 in *United States v. Matlock*, the Court said there was no Fourth Amendment violation when the police obtained consent to search a location from a third party who had common authority over the location. A co-occupant of a home could give police consent to search if another occupant was out. The non-present occupant would not have a Fourth Amendment claim if contraband or other incriminating evidence was discovered. Randolph modified the rule to require consent of all occupants, allowing for one non-consenting occupant to nullify other occupant consent.

Fernandez further modified the Randolph "disputed permission rule" by saying the ultimate rationale under the Fourth Amendment is reasonableness. If there are two tenants the unreasonableness to search based on the refusal of one is reasonable when the disputing co-tenant leaves the premises. For Mr. Fernandez, his exit from the premises was not voluntary since he was arrested. It was after his arrest and removal from the premises the police were then able to obtain a valid consent from the remaining occupant.

Navarette v. California

The Court's April opinion in *Navarette v. California* held that an anonymous 911 call reporting drunken or reckless driving can, without more information or further corroboration, provide reasonable suspicion for a traffic stop. This was a marked departure from the Court's 2009 denial of certiorari in a similar case (*Virginia v. Harris*) wherein Chief Justice Roberts took the rare approach of writing a dissent to a denial of certiorari.

In his dissent, Chief Justice Roberts wrote that the problem of DWI and public safety on the roadways dictates a different result than strict reliance upon the Court's 2000 opinion in *Florida v. J.L.* which "suppressed evidence seized by police after receiving an anonymous tip alleging that a young man, wearing a plaid shirt and waiting at a particular bus stop, was carrying a gun."

Police acted on the tip alone and without any further corroboration approached J.L., searched him and found a gun. Similarly, in Harris, a state trooper received the description of a motor vehicle being driven in an erratic manner suggesting the operator was DWI. The trooper quickly located the vehicle on the highway and pulled it over without making any independent observation corroborative of the vehicle's operation. For this reason, based on F*lorida v. J.L.*, the Virginia Supreme Court overturned the conviction and the U.S. Supreme Court denied certiorari.

However, when it came to be Prado Navarette's turn at the Supreme Court, he would not have the same legal good fortune. The Court's 5-4 majority opinion, of which Roberts was a member, was written by Justice Thomas to create a totality of the circumstances approach to the reasonable suspicion standard, independent of what was personally observed by the officer. While the totality of circumstances in this instance provided the officer reasonable suspicion to make the stop, Navarette should not be read to no longer require independent corroboration of alleged illegal or suspicious activity when provided by an anonymous caller.

Nor should it be assumed the Court created a DWI exception to the corroboration requirement. The tenuous legal ground this decision rests upon is illustrated by the fact of Justice Scalia's dissent in Navarette despite his joining with Roberts in the dissent to the denial of certiorari in Harris.

Plumhoff v. Rickard

The Court in May once again weighed in on the nature of qualified immunity defenses in civil actions brought against police officers. In the case of *Plumhoff v. Rickar*d the Court considered — among other things — whether the number of shots fired by officers at a fleeing vehicle was excessive as a matter of law.

In a unanimous 9-0 decision Justice Alito wrote that once deadly physical force is justified in responding to a threat to public safety, the continued use of deadly force is justified until the threat has ended. The Court held that in 2004, when the incident occurred, there was no clearly established right which the officers could be found to have violated; therefore they were entitled to qualified immunity.

Riley v. California and *United States v. Wurie*

The final cases to make the year end law enforcement review are the June decisions in the companion cases of*Riley v. California* and *United States v. Wurie*. Both of these cases involved the question of whether police need a warrant to search a cell phone incident to arrest.

I devoted special attention to these cases since the petitioner's brief in *Riley v. California* cited one of my columns from 2012 and I knew from writing the column there was a split opinion among the federal circuits and state courts.

On June 25th the Court provided its answer to the questions posed when Chief Justice Roberts wrote for the 9-0 unanimous panel that the Fourth Amendment requires a warrant to search an arrestee's cell phone. The warrantless search incident to arrest exception is for officer safety and the preservation of evidence. The Court said neither of these concerns is present with digital data, since the data cannot harm the officer and preservation of evidence can be maintained by disconnecting the phone from its network or placing the phone in a protective "Faraday" bag.

Chief Justice Roberts likened today's smart phones to mini-computers which contain much more than dialed and incoming telephone numbers. Even though the Court said a warrant was required, it did not foreclose all searches of phones upon arrest. There are emergency situations, the Court acknowledged, during which a warrantless search would be permissible. These situations would be case-specific exceptions.

Looking Ahead

Thus ends another year as we anticipate the coming of 2015. One case of interest — likely to be the subject of a column next year — has already been argued before the Court. *Heien v. North Carolina* considers whether a police officer's mistake of law provides the individualized reasonable suspicion that the Fourth Amendment requires to justify a traffic stop. More cases are sure to follow. In the meantime I hope for a safe and happy holiday season for all.

About the author

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